



April 1, 2002

Deeana Jang
Office of Civil Rights
Department of Health and Human Services
Room 506F
200 Independence Avenue, S.W.
Washington, D.C. 20201

Attn: LEP Comments

Dear Ms. Jang:

Thank you for seeking comments concerning the “Policy Guidance on Title VI Prohibition against National Origin Discrimination As It Affects Persons with Limited English Proficiency” (Guidance) reissued by the Office for Civil Rights of the Department of Health and Human Services (OCR) on February 1, 2002. The LEP Guidance offers a needed opportunity to address the gaps in services which currently exist for people who are not fluent in English. In this letter we express our general support for the LEP Guidance and offer a few recommendations to consider when finalizing it. In particular, we note the need for the Guidance to specifically address issues which arise in states as they implement their family assistance programs funded through the federal Temporary Assistance to Needy Families (TANF) block grants.

We fully agree with OCR that the newly released Guidance is a restatement of current law and merely clarifies its current policy in regard to enforcing compliance with Title VI. As the foreign-born population in the US continues to grow—and along with it, the second generation of immigrant families—we believe it is increasingly important to ensure that these members of our community are fully served within programs for which they are eligible. Indeed, the undeniable presence of immigrants and children of immigrants, who may not be fluent in English, within the low-income population in the United States means that family assistance services often can not be provided to low-income residents without specific attention to linguistic needs.

I. Background: The Need for Services to the LEP Population

In this section, we document briefly why TANF-funded programs need to consider and serve the LEP population as required under the Guidance. Our recommendations for changes to the Guidance are included in **Section II. Recommendations for the LEP Guidance**, page 4.

Because it is difficult to get information specifically on the LEP population, we provide here some information about immigrants in general as a proxy for the LEP themselves. We believe the information presented reinforces the need for appropriately directed services to the LEP population. The TANF program is designed to help low-income and low-skilled people connect to the labor market, by helping them find and retain employment. It is vital that TANF programs be accessible to immigrants and the limited English proficient, as both groups are substantial components of both low-income and low-skilled members of the workforce.

From 1990 to 1996, new immigrants, who are more likely to be limited English proficient, accounted for nearly two-fifths of the growth in the civilian labor force.¹ Over one-third of all workers in the US with less than a high-school education are immigrants,² making immigrants over-represented in low-skilled jobs when compared with their presence in the general population. For example, about 13 percent of native workers hold service jobs, compared with 19 percent of all immigrants, and 22 percent of recent immigrants.³ Immigrants tend to earn less than natives, especially recent immigrants. Nearly 24 percent of low-wage workers in low-income families with children are immigrants; about half are recent immigrants.⁴

Households headed by immigrants tend to be larger than natives' households, probably because the households are more likely to be a married couple family and are more likely to contain children. This means that an immigrant worker's income often has to stretch to cover more people, even though immigrants often earn less. In 2000, the poverty rate of families headed by immigrants was double that of native families (16.8 percent versus 8.3 percent); the poverty rate of families headed by recent immigrants was nearly triple the native rate (23.5 percent).⁵ Significantly, 86 percent of families headed by a legal immigrant contain a child who is a US citizen. In fact, 15 percent of all low-income

¹ Frank Bennici, Steven Mangum, and Andrew M. Sum, "The Economic, Demographic, and Social Context of Future Employment and Training Programs," in Burt S. Barnow and Christopher T. King, (eds.), *Improving the Odds*, (Washington, DC: The Urban Institute, 2000), Table 2.1.

² Steven A. Camarota, "Immigrants in the United States—2000: A Snapshot of America's Foreign-Born Population," (Washington, DC: Center for Immigration Studies, January 2001), Table 9.

³ US Census Bureau, "Foreign-Born Population of the United States, Current Population Survey, March 2000," (Tables 1.8 and 2.8). Available online:

<http://www.census.gov/population/www/socdemo/foreign/p20-534.html>.

⁴ Gregory Acs, "A Profile of Low-Wage Workers," (Washington, DC: The Urban Institute, May 1999), Table 11. Available online: http://www.dol.gov/asp/futurework/conference/lowwage/lowwage_toc.htm.

"Low-income" is defined as an annual family income below \$24,600.

⁵ US Census Bureau, 2000 (Tables 1.11 and 2.11).

families with children are made up of immigrant parents and citizen kids.⁶ In many states, the figure is higher; for example, in Texas, nearly one-third of all low-income children live in “mixed-immigration status” families.⁷

Although the overhaul of the welfare system in 1996 and immigration legislation passed the same year restricted immigrant eligibility for TANF and other public assistance programs, the system remains an important source of work supports for immigrants. Welfare reform prohibited the provision of federal TANF to legal immigrants who arrived after enactment of the legislation on August 22, 1996, until those immigrants had been in the U.S. for at least five years. States now have the option of providing federal TANF assistance to qualified immigrants who arrived before enactment, and to those who arrived after enactment once they’ve been present for the requisite five years. States may also provide *state-funded* TANF to immigrants who arrived after enactment during the five-year bar. Many states have taken advantage of the discretion in the law to continue to serve immigrants. For example, 49 states provide federal TANF assistance to immigrants present before enactment, and 19 states provide state-funded TANF to post-enactment immigrants.

We believe that the presence of large numbers of immigrants, and thus, speakers of languages other than English, among the low-income and low-skilled population means that state TANF agencies must take particular steps to ensure they are serving this population when they are categorically eligible. Many of these steps are those outlined in the Guidance, but have not been fully or properly implemented. We have heard from a number of organizations serving TANF clients across the country that limited English speakers are poorly served in their communities. Some of what these organizations have found include the following:

- In New York City, a community group which surveyed welfare recipients found that almost two-thirds (64.8%) of the Spanish speakers reported having problems communicating with their caseworkers, making it difficult for them to access needed benefits.⁸
- In Texas, emergency service providers found that it was harder for LEP clients to complete the application process to receive assistance. Furthermore, they found that a lack of understanding of the process led eligible families to be denied services, and that the availability of bilingual staff at Department of Human Services offices varied widely from region to region and office to office. On a positive note, OCR’s Guidance has encouraged the Department of Human Services to use an AT&T language line to assist with interpretation needs.⁹

⁶ Michael Fix and Jeffrey S. Passel, “The Scope and Impact of Welfare Reform’s Immigrant Provisions,” (Washington, DC: The Urban Institute, September 2001) (p. 17).

⁷ Patrick Bresette, “TANF and Immigrants in Texas: Lessons for Reauthorization,” (Austin, TX: Center for Public Policy Priorities, February 2002), Table 4.

⁸ Make the Road by Walking, “System Failure,” (1999). Available online: www.maketheroad.org.

⁹ Patrick Bresette, “TANF and Immigrants in Texas: Lessons for Reauthorization,” (Austin, TX: Center for Public Policy Priorities, February 2002).

- In Tennessee, a written policy recognizing the need for free, trained interpreters was developed after the release of OCR’s Guidance. However, the policy is not fully complied with. For example, signs in welfare offices continue to be posted only in English and documents are still not translated. In fact, the Department of Human Services projects that documents in any language other than Spanish will not be available until 2004.¹⁰
- In Michigan, advocates have found that bilingual staff are often unavailable, interpreters are not provided reliably, and materials are rarely translated to LEP recipients and applicants. Policies to correct these practices are implemented erratically across the state. Advocates have documented cases where young children have been asked to interpret for their parents. Group orientations to the TANF program are often conducted only in English, as are work skills classes, and there is no regular translation of materials or correspondence. Furthermore, there is no tracking of cases’ primary language, so there is no way for caseworkers to know which form (Spanish or Arabic) to send out, if such a form exists.¹¹
- In Illinois, there is no tracking of LEP clients who speak a language other than Spanish. In fact, despite a very diverse immigrant population, Spanish was the only language materials were translated into until very recently. Even now, notices are not translated into anything other than Spanish. There is an official policy to provide free interpreters and not to use client-provided interpreters, but in practice this policy is not always implemented. In some cases, children are asked to interpret for their parents.¹²
- In Pennsylvania, posters, brochures, and directional signs in TANF offices are usually posted only in English. In general, there is very little interpretation or bilingual staff available. Employment and training activities appear to be available only in English.¹³

We believe that these patterns of inconsistent response to existing populations and lack of available services showcase the tremendous need for the Guidance, as well as for its enforcement and for assistance to organizations in complying.

¹⁰ Lisa J. D’Souza and Russell Overby, “TANF and Immigrant Families in Tennessee,” (Tennessee Justice Center, 2002).

¹¹ Cate Beekman, “Michigan’s Immigrant Population under TANF,” (Center for Civil Justice, January 2002).

¹² Dan Lesser, “Immigrants and TANF: Illinois’ Experience,” (Chicago: National Center on Poverty Law, January 2002).

¹³ Jonathan Blazer, “Improving TANF for Immigrants and People with Limited English Proficiency,” (Philadelphia: Community Legal Services, February 2002).

II. Recommendations for the LEP Guidance

Given the presence of immigrant families, including citizen children, within the population which is eligible for TANF assistance, we believe that OCR should take the following steps when considering its LEP Guidance:

Decrease the numerical and percentage requirements used to explain the “safe harbor” provisions. While we recognize the need to provide covered entities with concrete parameters which trigger when written translation of documents and oral interpreters must be made available in particular languages, we believe the safe harbor provisions specified in the Guidance are too high and are phrased in a confusing manner. Currently, the Guidance specifies that the presence of 3,000 people or 10 percent of the eligible population within a particular language group requires all written materials to be translated. A threshold of 1,000 people or five percent of the eligible population within a given language group requires vital documents to be translated, and other documents to be translated orally. The presence of up to 100 people in a given language group necessitates only the distribution of a written notice in the group’s language of the availability of oral translation if necessary.

We recommend that the first two thresholds be lowered, so that the threshold for written translation of all documents is 1,000 people or 10 percent of the eligible population (whichever is less), and the threshold for written translation of vital documents (and notice of the availability of oral translation of other forms) is 100 people or 5 percent (whichever is less) of the eligible population. Language group populations of less than 100 people or 5 percent of the eligible population should trigger the distribution of a written notice in the group’s language specifying the availability of oral translation if necessary. These thresholds are more similar than the ones proposed in the Guidance to those already used in the Food Stamp program.¹⁴

Since so much important information in state TANF programs is communicated by forms and documents, we believe it is extremely important that these forms and documents be translated into appropriate languages. Documents collect information which determine a client’s eligibility for assistance, notify clients of their rights and responsibilities, and inform clients of impending time limits or compliance issues. In all these cases it is vital that LEP clients are given every opportunity to understand fully what is being asked of them or communicated to them. Given the plethora of professional translation services available, it seems that the translation of forms is something which could be

¹⁴ Food Stamp regulations state that the agency shall provide materials used in Program informational activities in the appropriate languages: 1) in project areas with less than 2,000 low-income households, if approximately 100 or more of those households are of a single-language minority; 2) in project areas with 2,000 or more low-income households, if approximately 5 percent or more of those households are of a single-language minority. 7 C.F.R. §272.4(b)(2). The regulations further state that the State agency shall provide both certification materials, such as the food stamp application form, change report form and notices to households, and bilingual staff or interpreters in each certification office that provides service to an area containing approximately 100 single-language minority low-income households and in each project area with a total of less than 100 low-income households if a majority of those households are of a single-language minority. 7 C.F.R. §272.4(b)(3).

accomplished with relative ease, were it clearly made a responsibility of the agency in question.

Specify that for activities devolved to the local level, safe harbor thresholds may be calculated on a statewide basis, if appropriate. In many states, decisions about TANF policies are made in counties as opposed to at the state level. This may result in thousands of clients in some states never receiving translated materials, because the LEP clients may be distributed across the state without reaching the threshold level in any one area. The Guidance should clarify that the relevant service area for notices and forms used across the entire state should be the entire state, even if the covered entity (e.g. a private contractor) has a smaller relevant service area.

Clarify the importance of service delivery within the safe harbor provision. As mentioned in Section I, we have heard of numerous situations in TANF agencies across the country where LEP recipients have been referred to employment services only to discover those services are available only in English. Often, LEP clients are required to spend many hours each week in such classes, despite their inability to understand the activities or to benefit from them. In other instances, they are simply ignored and not provided with any services. We believe the Guidance could be strengthened if the safe harbor provision included the requirement that a covered entity must provide comparable services (either through an interpreter or directly through a bilingual staff member) to LEP clients subject to participation requirements. Without this specific provision, it is not currently clear how the Guidance will ensure that LEP clients receive the employment and training assistance which could help them obtain employment, and in which they may be required to participate in order to continue receiving assistance.

Prohibit the use of minors as interpreters, except in emergency situations. We would like the Guidance to provide stronger language discouraging the use of untrained interpreters, and specifically prohibiting the use of minors as interpreters. TANF offices are often the site of discussions which involve both technical information about eligibility and work requirements, as well as issues of an extremely private nature, such as domestic violence, mental health, or learning disabilities. Many of these discussions are inappropriate to be shared across family members, especially minors. In addition, untrained interpreters may be unable to convey the full importance or all the details of a particular conversation.

While we are pleased that the Guidance recognizes the dangers of using untrained interpreters and has included language which discourages the use of friends, minors or family members as interpreters, we do not feel that it goes far enough on the use of minors. Under current TANF law, family assistance is not an entitlement, and failure to meet certain requirements can mean in many states that an entire family's grant or access to services may be terminated. Minor children are not the appropriate vehicles to shoulder the burden of assuring comprehension of all rules and requirements. In addition, during any assessment process, the use of minors may severely compromise an applicant's or recipient's ability or willingness to discuss barriers to employment, such as

domestic violence, mental health issues, or learning disabilities, which may then prevent the applicant or recipient from receiving appropriate corrective services.

Thank you again for seeking comments on the LEP Guidance. We believe the Guidance already serves as an excellent model to provide services to the LEP population, and that further improvements will assist that population even more.

Sincerely,

Elise Richer

On behalf of the Center for Law and Social Policy